

**§ 142.18 EPA review of State monitoring determinations.**

(a) A Regional Administrator may annul a State monitoring determination for the types of determinations identified in §§ 141.23(b), 141.23(c), 141.24(f), 141.24(h), and 141.40(n) in accordance with the procedures in paragraph (b) of this section.

(b) When information available to a Regional Administrator, such as the results of an annual review, indicate a State determination fails to apply the standards of the approved State program, he may propose to annul the State monitoring determination by sending the State and the affected PWS a draft Rescission Order. The draft order shall:

- (1) Identify the PWS, the State determination, and the provisions at issue;
- (2) Explain why the State determination is not in compliance with the State program and must be changed; and

(3) Describe the actions and terms of operation the PWS will be required to implement.

(c) The State and PWS shall have 60 days to comment on the draft Rescission Order.

(d) The Regional Administrator may not issue a Rescission Order to impose conditions less stringent than those imposed by the State.

(e) The Regional Administrator shall also provide an opportunity for comment upon the draft Rescission Order, by

(1) Publishing a notice in a newspaper in general circulation in communities served by the affected system; and

(2) Providing 30 days for public comment on the draft order.

(f) The State shall demonstrate that the determination is reasonable, based on its approved State program.

(g) The Regional Administrator shall decide within 120 days after issuance of the draft Rescission Order to:

- (1) Issue the Rescission Order as drafted;
- (2) Issue a modified Rescission Order; or
- (3) Cancel the Rescission Order.

(h) The Regional Administrator shall set forth the reasons for his decision, including a responsiveness summary

addressing significant comments from the State, the PWS and the public.

(i) The Regional Administrator shall send a notice of his final decision to the State, the PWS and all parties who commented upon the draft Rescission Order.

(j) The Rescission Order shall remain in effect until cancelled by the Regional Administrator. The Regional Administrator may cancel a Rescission Order at any time, so long as he notifies those who commented on the draft order.

(k) The Regional Administrator may not delegate the signature authority for a final Rescission Order or the cancellation of an order.

(l) Violation of the actions, or terms of operation, required by a Rescission Order is a violation of the Safe Drinking Water Act.

[56 FR 3595, Jan. 30, 1991]

**§ 142.19 EPA review of State implementation of national primary drinking water regulations for lead and copper.**

(a) Pursuant to the procedures in this section, the Regional Administrator may review state determinations establishing corrosion control or source water treatment requirements for lead or copper and may issue an order establishing federal treatment requirements for a public water system pursuant to § 141.82 (d) and (f) and § 141.83(b) (2) and (4) where the Regional Administrator finds that:

(1) A State has failed to issue a treatment determination by the applicable deadline;

(2) A State has abused its discretion in making corrosion control or source water treatment determinations in a substantial number of cases or in cases affecting a substantial population, or

(3) The technical aspects of State's determination would be indefensible in an expected federal enforcement action taken against a system.

(b) If the Regional Administrator determines that review of state determination(s) under this section may be appropriate, he shall request the State to

## Environmental Protection Agency

## § 142.19

forward to EPA the state determination and all information that was considered by the State in making its determination, including public comments, if any, within 60 days of the Regional Administrator's request.

(c) Proposed review of state determinations:

(1) Where the Regional Administrator finds that review of a state determination under paragraph (a) of this section is appropriate, he shall issue a proposed review order which shall:

(i) Identify the public water system(s) affected, the State determination being reviewed and the provisions of state and/or federal law at issue;

(ii) Identify the determination that the State failed to carry out by the applicable deadline, or identify the particular provisions of the State determination which, in the Regional Administrator's judgment, fail to carry out properly applicable treatment requirements, and explain the basis for the Regional Administrator's conclusion;

(iii) Identify the treatment requirements which the Regional Administrator proposes to apply to the affected system(s), and explain the basis for the proposed requirements;

(iv) Request public comment on the proposed order and the supporting record.

(2) The Regional Administrator shall provide notice of the proposed review order by:

(i) Mailing the proposed order to the affected public water system(s), the state agency whose order is being reviewed, and any other parties of interest known to the Regional Administrator; and

(ii) Publishing a copy of the proposed order in a newspaper of general circulation in the affected communities.

(3) The Regional Administrator shall make available for public inspection during the comment period the record supporting the proposed order, which shall include all of the information submitted by the State to EPA under paragraph (b) of this section, all other studies, monitoring data and other information considered by the Agency in developing the proposed order.

(d) Final review order:

(1) Based upon review of all information obtained regarding the proposed review order, including public comments, the Regional Administrator shall issue a final review order within 120 days after issuance of the proposed order which affirms, modifies, or withdraws the proposed order. The Regional Administrator may extend the time period for issuing the final order for good cause. If the final order modifies or withdraws the proposed order, the final order shall explain the reasons supporting the change.

(2) The record of the final order shall consist of the record supporting the proposed order, all public comments, all other information considered by the Regional Administrator in issuing the final order and a document responding to all significant public comments submitted on the proposed order. If new points are raised or new material supplied during the public comment period, the Regional Administrator may support the responses on those matters by adding new materials to the record. The record shall be complete when the final order is issued.

(3) Notice of the final order shall be provided by mailing the final order to the affected system(s), the State, and all parties who commented on the proposed order.

(4) Upon issuance of the final order, its terms constitute requirements of the national primary drinking water regulation for lead and/or copper until such time as the Regional Administrator issues a new order (which may include rescission of the previous order) pursuant to the procedures in this section. Such requirements shall supersede any inconsistent treatment requirements established by the State pursuant to the national primary drinking water regulations for lead and copper.

(5) The Regional Administrator may not issue a final order to impose conditions less stringent than those imposed by the State.

(e) The Regional Administrator may not delegate authority to sign the final order under this section.

(f) Final action of the Regional Administrator under paragraph (d) of this section shall constitute action of the

## § 142.20

## 40 CFR Ch. I (7–1–04 Edition)

Administrator for purposes of 42 U.S.C. § 300j–7(a)(2).

[56 FR 26563, June 7, 1991]

### Subpart C—Review of State-Issued Variances and Exemptions

#### § 142.20 State-issued variances and exemptions under Section 1415(a) and Section 1416 of the Act.

(a) States with primary enforcement responsibility may issue variances to public water systems (other than small system variances) from the requirements of primary drinking water regulations under conditions and in a manner which are not less stringent than the requirements under Section 1415(a) of the Act. In States that do not have primary enforcement responsibility, variances may be granted by the Administrator pursuant to Subpart E of this part.

(1) A State must document all findings that are required under Section 1415(a) of the Act.

(2) If a State prescribes a schedule pursuant to section 1415(a) of the Act requiring compliance with a contaminant level for which the variance is granted later than five years from the date of issuance of the variance the State must—

(i) Document its rationale for the extended compliance schedule;

(ii) Discuss the rationale for the extended compliance schedule in the required public notice and opportunity for public hearing; and

(iii) Provide the shortest practicable time schedule feasible under the circumstances.

(b) States with primary enforcement responsibility may issue exemptions from the requirements of primary drinking water regulations under conditions and in a manner which are not less stringent than the requirements under Section 1416 of the Act. In States that do not have primary enforcement responsibility, exemptions may be granted by the Administrator pursuant to Subpart F of this part.

(1) A State must document all findings that are required under Section 1416 of the Act:

(i) Before finding that management and restructuring changes cannot be made, a State must consider the fol-

lowing measures, and the availability of State Revolving Loan Fund assistance, or any other Federal or State program, that is reasonably likely to be available within the period of the exemption to implement these measures:

(A) Consideration of rate increases, accounting changes, the appointment of a State-certified operator under the State's Operator Certification program, contractual agreements for joint operation with one or more public water systems;

(B) Activities consistent with the State's Capacity Development Strategy to help the public water system acquire and maintain technical, financial, and managerial capacity to come into compliance with the Act; and

(C) Ownership changes, physical consolidation with another public water system, or other feasible and appropriate means of consolidation which would result in compliance with the Act;

(ii) The State must consider the availability of an alternative source of water, including the feasibility of partnerships with neighboring public water systems, as identified by the public water system or by the State consistent with the Capacity Development Strategy.

(2) In the case of a public water system serving a population of not more than 3,300 persons and which needs financial assistance for the necessary improvements under the initial compliance schedule, an exemption granted by the State under section 1416(b)(2)(B)(i) or (ii) of the Act may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 additional years, only if the State establishes that the public water system is taking all practicable steps to meet the requirements of Section 1416(b)(2)(B) of the Act and the established compliance schedule to achieve full compliance with the contaminant level or treatment technique for which the exemption was granted. A State must document its findings in granting an extension under this paragraph.

[63 FR 43847, Aug. 14, 1998]